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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/057,535	01/24/2002	Curtis White	BSC-159C1	3017

22852 7590 04/22/2004

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EXAMINER

PRIDDY, MICHAEL B

ART UNIT	PAPER NUMBER
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3732

DATE MAILED: 04/22/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/057,535	WHITE ET AL.	
	Examiner	Art Unit	
	Michael B Priddy	3732	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 24
- 4) ☒ Claim(s) 18, 21, 22, and 26-36 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 18, 21, 24, 29, 30 and 35 is/are rejected.
- 7) ☒ Claim(s) 22, 26-28, 31-34 and 36 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 18, 24, 29, 30 and 35 are rejected under 35 U.S.C. 102(b) as being anticipated by Miller et al. (U.S. 5,549,626). Miller et al. teaches a medical retrieval device (lines 1-2 of the abstract: "for removing particles from arteries and veins") comprising: a handle 22; a sheath 14 extending from the handle 22 and including a lumen 18, the sheath 14 including a distal end away from the handle 22; and a retrieval assembly 13 that is moveable relative to the sheath 14 to achieve a collapsed position of the retrieval assembly 13 within the lumen 18, the retrieval assembly 13 comprising a proximal portion comprising a distal end, a plurality of strands, and a three-dimensional shape when at least a portion of the retrieval assembly extends out of the lumen from the distal end of the sheath, and a distal portion positioned at the distal end of the proximal portion, the distal portion comprising a plurality of wires, each wire joined to the distal end of at least two strands, said distal portion extending perpendicular to the long axis of the retrieval device when the proximal portion of the retrieval assembly 13 extends out of the distal end of the sheath 14; wherein moving the sheath 14 in a distal direction causes the retrieval assembly 13 to collapse when it enters the lumen 18.

It should be noted when referring to either of figures 2-4 that retrieval assembly 13 is comprised of a mesh-like material including a plurality of intersecting filaments. The retrieval assembly may be divided at any point along its length into proximal portions and distal portions. In such a case, any of the filaments of the proximal portion may be considered "strands" and the filaments extending around the perimeter of the retrieval assembly may be considered "wires". Each of these "wires" defines a plane which is perpendicular to the long axis of the retrieval device when the proximal portion of the retrieval assembly extends out of the distal end of the sheath 14.

It is considered inherent that at least one of the plurality of wires is flexible since, as clearly shown by Fig. 2, they are capable of collapse disposal of the retrieval assembly 13 within sheath 14.

The steps of the method of claim 30 are believed met by the disclosure represented in Figs. 2-4. Fig. 4 shows thrombi 11 being trapped by retrieval assembly 13 and lines 34-37 indicate withdrawal of the retrieval assembly 13 once filtering is no longer needed.

Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Miller et al. Miller et al. discloses the claimed invention except for each strand comprises stainless steel. It would have been obvious to one having ordinary skill in the art at the time the invention was made to form the strands of Miller et al. of stainless steel, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. In re Leshin, 125 USPQ 416.

Allowable Subject Matter

Claims 22, 26-28, 31-34 and 36 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

Applicant's arguments with respect to claims 18, 21, 24, 29, 30 and 35 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

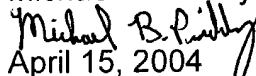
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.


Art Unit: 3732

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael B. Priddy whose telephone number is (703) 308-8620. The examiner can normally be reached on Mon.-Fri. 8 a.m. - 5 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached on (703) 308-2582. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Michael B. Priddy

April 15, 2004


KEVIN SHAVER
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700